

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

September 8, 2005

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 29, 2005

Case Number: TSO-0215

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." <sup>1</sup> A local DOE Security Office suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to maintain a security clearance. In November 2003, the police arrested the individual on the following charges: Driving While Impaired (DWI) by Alcohol, "Driving under the Influence (DUI) of Alcohol per se," Possession of a Controlled Dangerous Substance, and Possession of a Controlled Dangerous Substance with Intent to Distribute. After the individual reported his arrest to the DOE, the DOE conducted a Personnel Security Interview (PSI) with the individual to obtain information regarding the circumstances surrounding the arrest and the extent of the individual's alcohol and drug use. After the PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for an agency-sponsored mental evaluation. The DOE consultant-psychiatrist examined the individual in June 2004, and memorialized his findings in a report (Psychiatric Report or Exhibit 3). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from Alcohol Dependence, in Early Remission. At the time of the psychiatric evaluation, the DOE consultant-psychiatrist did not believe that the individual had shown adequate evidence of rehabilitation or reformation from his alcohol dependence.

---

<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In November 2004, the DOE initiated formal administrative review proceedings. The DOE informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the DOE described this derogatory information and explained how that information fell within the purview of two potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections j and k (Criteria J and K respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual filed a written response to the Notification Letter and exercised his right under the Part 710 regulations by requesting an administrative review hearing. On March 31, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed Kent S. Woods as the Hearing Officer in this case. Because of an unforeseen conflict, Mr. Woods could not conduct the hearing in this case. On July 6, 2005, the OHA Director reassigned the case to me and designated me as the Hearing Officer. Soon after my appointment, I conducted the administrative review hearing in the case.

At the hearing, eight witnesses testified. The DOE called one witness and the individual presented his own testimony and that of six witnesses. In addition to the testimonial evidence, the DOE submitted 14 exhibits into the record; the individual tendered 15 exhibits. On August 16, 2005, I received the hearing transcript (Tr.) at which time I closed the record in the case.

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

---

<sup>2</sup> Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j). Criterion K concerns information that a person has “[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law.” 10 C.F.R. § 708.8 (k).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **B. Basis for the Hearing Officer’s Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual’s access authorization eligibility in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the DOE cites two potentially disqualifying criteria as bases for suspending the individual’s clearance, *i.e.*, Criteria J and K.

With respect to Criterion J, the DOE relates the following information. First, a DOE consultant-psychiatrist opined that the individual meets the diagnostic criteria for alcohol dependence as defined in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR). Second, the individual has had two alcohol-related arrests, one in 1989 and another in 2003. The information set forth above clearly raises questions about the individual’s alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G.

As for Criterion K, the DOE cites the individual’s arrest in November 2003 for possession of crack cocaine and intent to distribute crack cocaine. Second, the DOE relies on statements made by the individual during the PSI and the psychiatric examination that he used marijuana twelve to fifteen times and Quaaludes a couple of times more than 30 years ago. Any involvement with illegal drugs shows a willingness to violate criminal laws. As such, when a person is involved with illegal drugs, a security concern is raised about a person’s willingness or ability to follow the rules regarding the protection of classified information. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline H.

#### IV. Findings of Fact

The individual began consuming alcohol at age 14. Ex. 3 at 2. By age 18, the individual was drinking to the point of intoxication once a week. *Id.* By the individual's own account, his drinking escalated in the 1980s. *Id.* In 1987, he tried unsuccessfully to stop drinking on his own. *Id.* It was the individual's arrest in 1989 for DWI that finally led him to confront his alcohol addiction and to seek treatment. Exhibits A through I; Tr. at 42. Immediately after his 1989 DWI, the individual voluntarily entered an intensive outpatient alcohol treatment program and began attending Alcoholics Anonymous (AA) meetings twice a week. Tr. at 42. While in recovery, the individual became a deacon in his church, became involved with a children's ministry and volunteered extensively. Tr. at 42-43, 93, 101, 106; Exhibits A through I.

Sometime in 1997, the individual relocated to another state for job advancement. Ex. 3 at 3; Ex. H. After his relocation, the individual maintained his sobriety but did not re-establish his ties to AA. Tr. at 116. In July 1997, the individual was diagnosed with advanced liver disease secondary to Hepatitis C cirrhosis and alcoholic cirrhosis. Ex. O, Tr. at 112.

In November 2003, the individual had been sober for 14 years when he decided to have one alcoholic beverage while traveling out of state on official business. That ill-fated decision led to a catastrophic relapse. According to the record, the individual was dining at a sports bar and restaurant when he decided that he could have one beer. Ex. 8 at 9. The individual claims that he stopped counting the number of beers that he had consumed after his second drink. *Id.* at 11. Two patrons seated next to the individual at the sports bar offered to drive the individual back to his hotel in the individual's rental car. *Id.* The individual accepted the couple's offer. According to the individual, he was so drunk that he kept "blacking out" in the back seat of the car. *Id.* at 14; Tr. at 117. The individual was awakened from one of his blackouts by the arguing of the man and woman who were in the front seat of his rental vehicle. Ex. 8 at 16. At this point, the individual insisted on driving when he realized that the vehicle was no where near his hotel. *Id.* at 16-18. Soon after the individual began driving, a police officer observed the individual's vehicle make a left turn at an intersection where a "no left turn" sign was posted. Ex. 9. After initiating the traffic stop, the officer smelled alcohol on the individual's breath and administered a field sobriety test to the individual. *Id.* The individual failed the field sobriety test and was transported to the police station. *Id.* A Breath Alcohol Content (BAC) test given to the individual shortly after arriving at the police station yielded a BAC of .016. When the police officer was inventorying the individual's personal affects after booking the individual on charges of DWI and DUI, the officer discovered nine small bags of what later turned out to be crack cocaine in the individual's effects. *Id.* This discovery of illegal drugs, with a street value of \$200, led to the 2003 criminal charges at issue in the Notification Letter. Ex. 11.

#### V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In

resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).<sup>3</sup> After due deliberation, I have determined that the individual's access authorization should be restored. I find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

## **A. Criterion J**

The individual does not dispute that he suffers from alcohol dependence. Therefore, the pivotal question before me is whether the individual has presented convincing evidence to demonstrate that he is adequately rehabilitated or reformed from his alcohol dependence.

### **1. The Individual's Testimony**

The individual testified that he last consumed alcohol in November 2003. *Id.* at 118-119. He stated that he intends to abstain from alcohol for the rest of his life. *Id.* at 120. According to the individual, should he resume drinking, he will experience a rapid death. *Id.* at 110. He explained that because his liver is so damaged, he is going to die unless he receives a liver transplant. *Id.* Any use of alcohol, related the individual, will hasten his death. *Id.* When asked by the DOE Counsel to account for his actions on November 3, 2003, the individual responded, "That's the insanity of alcoholism." *Id.* at 114. He stated that he had not continued with AA when he moved to another state, did not have a new sponsor, and was not reading his AA book. *Id.* at 116. In short, he became complacent and deceived himself into thinking that he was cured. *Id.* The individual explained that in AA part of recovery is being completely honest with yourself and other people. *Id.* at 118. For this reason, he told many people, including those who testified on his behalf and who wrote letters in support of him, about his battle with alcoholism, his relapse and his intended course of recovery. *Id.*

### **2. The Wife's Testimony**

The individual's wife confirmed that her husband last consumed alcohol on November 3, 2003, the date of his arrest. Tr. at 25. She related that since November 2003 her husband has been attending AA meetings and seeing his EAP Counselor on a weekly basis. *Id.* at 27. She also related that her husband knows that he must remain in AA for the rest of his life. *Id.* at 37. She highlighted how the individual is committed to maintaining his sobriety and continuing his ties with AA. For example, she noted that before her husband travels now, he locates AA meetings in other states via the internet so he can attend meetings when he is away from home. *Id.* To aid her husband's recovery, the individual's wife has attended Al-Anon, a group whose purpose is to help families of alcoholics learn

---

<sup>3</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

to support and not enable their alcoholic family member. *Id.* at 35-38. She added that there is no alcohol in their home. *Id.* at 23. Finally, the individual's wife related her belief that her husband has made an internal commitment never to drink again. *Id.* at 35.

### **3. The AA Sponsor's Testimony**

The individual's AA sponsor testified that he knows from discussions with the individual that the individual is totally committed to sobriety. *Id.* at 50. He added that the November 2003 incident made the individual want to reaffirm his sobriety and recovery. *Id.* at 52. He also affirmed that the individual attends weekly AA meetings at lunchtime. *Id.* at 48.

### **4. The EAP Counselor's Testimony**

The individual's EAP Counselor testified that he began seeing the individual in May 2004 for assistance in establishing and maintaining complete sobriety and addressing the legal problems that emanated from the November 2003 incident. *Id.* at 58-60. According to the EAP Counselor, the individual has completed 25 sessions and passed 22 random alcohol tests. *Id.* at 58. The EAP Counselor opined that the individual is very committed to maintaining sobriety. *Id.* at 60. He added that given the individual's current state of health, it would be suicidal if he were to resume drinking. *Id.* According to the EAP Counselor, AA is a lifetime project. *Id.* at 63. He believes that the individual relapsed because he drifted away from AA, lost his focus, and became overconfident. *Id.* The EAP Counselor concluded that the individual's wife has set firm boundaries for her husband and is committed to helping him maintain his sobriety. *Id.* at 64.

### **5. The Former Supervisor's Testimony**

The individual's former supervisor testified that she supervised the individual from 2001 to 2005. *Id.* at 76. She opined that the incident in November 2003 was "very much out of character for the individual." *Id.* at 78. She knows that the individual is in AA and the EAP program for his alcohol issues. *Id.* at 80. She added that the individual is an excellent, dedicated employee who works long hours to accomplish his mission. *Id.* at 77-83.

### **6. The Nephew's Testimony**

The individual's nephew testified that he knew the individual had stopped drinking alcohol in the late 1980s and had attended AA. *Id.* at 90-91. He characterized the November 2003 incident as a "setback," and opined that his uncle is serious about maintaining his sobriety. *Id.* at 93.

### **7. A Friend's Testimony**

One of the individual's friends who has known him for 15 years testified that the individual confided in him that he has an alcohol problem and that he was arrested in November 2003. *Id.* at 99-100. The friend stated that the individual was very embarrassed by his 2003 arrest and expressed how much he had hurt his family and his friends by his actions. *Id.* at 100. The friend also related that the individual's wife and his wife are good

friends and because of this fact he knows that the individual's wife is totally supportive of her husband's sobriety. *Id.* at 101.

## **8. The DOE Consultant-Psychiatrist's Testimony**

The DOE consultant-psychiatrist listened to the testimony of all the witnesses at the hearing prior to testifying himself. He first testified that at the time he examined the individual in June 2004, the individual had been sober for seven months. At the time of the evaluation, the DOE consultant-psychiatrist opined that the individual needed to continue with his outpatient treatment regime and maintain abstinence for one year from the date of his evaluation, *i.e.*, June 2005. After listening to all the hearing testimony, the DOE consultant-psychiatrist testified that he finds the individual to be both rehabilitated and reformed from his alcohol dependence. *Id.* at 150. He first pointed out that the individual has done everything requested of him in the Psychiatrist Report. For example, he has continued seeing his EAP Counselor, he has continued attending AA meetings, and has been abstinent for more than one year since the date of the Psychiatric Report. *Id.*

In the judgment of the DOE consultant-psychiatrist, the individual's risk of relapse is low. *Id.*

## **9. Hearing Officer Evaluation of Evidence**

In the administrative review process, Hearing Officers accord great deference to the opinions of psychiatrists and other mental health professionals regarding the issue of rehabilitation and reformation. *See e.g.*, *Personnel Security Hearing* (Case No. VSO-0146), 26 DOE ¶ 82,788 (1997) (affirmed by OSA, 1998) (finding rehabilitation); *Personnel Security Hearing* (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995) (affirmed by OSA, 1995) (finding of rehabilitation); *Personnel Security Hearing* (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995) (affirmed by OSA, 1995) (finding of no rehabilitation). In this case, I accorded substantial weight to the revised opinion of the DOE consultant-psychiatrist who testified that the individual has achieved reformation and rehabilitation. I also accorded much weight to the opinion of the EAP Counselor who testified that the individual is committed to sobriety. Moreover, I determined that the testimonial and documentary evidence submitted by the individual weighed heavily in the individual's favor. Specifically, the individual, his wife, his mother-in-law, his brothers-in-law, his nephews, his friend, his supervisor, his AA sponsor and his EAP Counselor all persuaded me through their convincing testimony or written testaments<sup>4</sup> that the individual is committed to maintaining his sobriety and remaining in AA for the rest of his life. The individual's wife, EAP Counselor, AA sponsor and other family members convinced me also that they are willing to provide a network of support to the individual in his recovery efforts. The cumulative testimony of all the witnesses who testified on the individual's behalf is bolstered by the AA sign-in sheets, the records of the individual's attendance with the EAP Counselor, and the negative test results from the individual's 18 random

---

<sup>4</sup> The documentary evidence submitted by the individual included notarized letters from his sister, his mother-in-law, two nephews and four brothers-in-law that address the individual's current involvement in AA and his renewed dedication to living one day at a time. Exhibits B through I.

alcohol tests. *See* Exhibits L and M.<sup>5</sup> Finally, I was impressed that the individual now locates AA meetings in other states before he travels out of town. His action in this regard demonstrates to me that he is attempting to ensure that his recovery efforts are not derailed. In the end, the weight of the evidence supports the conclusion that the individual is rehabilitated and reformed from his alcohol dependence. I find, therefore, that the individual has mitigated the Criterion J security concerns at issues.

## **B. Criterion K**

The individual argued at the hearing that he has not used, or been involved with, any illegal drugs for more than 30 years. Tr. at 129-132. As for the 2003 drug charges filed against him, the individual points out that those charges were dismissed. Ex. P.<sup>6</sup> The individual adamantly maintained that the drugs uncovered on his person on November 3, 2003 did not belong to him. Response to Notification Letter; Tr. at 116. He speculated that the two persons who offered to drive him to his hotel may have placed the drugs in his pocket when he was “blacked out” in the back seat of the rental car. *See* Response to Notification Letter. As he looked back on the night in question, the individual realized that the other two occupants’ articulated concern about being pulled over by police may have been grounded in their knowledge that illegal drugs were in the car. *Id.* The individual also suspects that the couple robbed him of two rings valued at \$900 and \$160 in cash. Tr. at 117.

At the hearing, the DOE Counsel questioned the individual whether it was possible that he might have purchased the drugs while in an inebriated state. The DOE Counsel pointed out that the street value of the crack cocaine was \$200 and that the individual claimed that \$160 was missing from his person when he arrived at the police station. Tr. at 117. The individual vociferously denied that he ever purchased cocaine, including on the night in question. *Id.* He explained that even if he had experienced a blackout, he would never do anything that is out of character for him, such as robbing a bank, raping a person, or buying drugs. *Id.* He added that he is terrified by crack cocaine because of news media reports regarding the danger of this drug. *Id.* Finally, the individual noted that in addition to his money, someone took two rings valued at \$900 from his person on the night in question. *Id.*

The individual’s wife testified that she and her husband have been married 25 years and that drugs have never been a part of his life. *Id.* at 34. She explained that her husband was dumbfounded by the drug charges filed against him in November 2003. *Id.* When asked by the DOE Counsel if she believed her husband’s version of events regarding the illegal drugs, she responded, “absolutely.” *Id.*

The individual’s AA sponsor who has also worked with the individual at his place of employment for eight years testified that he was aware that the individual had been

---

<sup>5</sup> Exhibit M consists of the 18 random alcohol breath test results. As noted in the Decision, the EAP Counselor testified that the individual took 22 random alcohol breath tests, all of which yielded negative results.

<sup>6</sup> According to the Criminal Hearing Sheet submitted as Exhibit P, the drug charges are listed as “Nolle Prossed,” a term denoting that the prosecutor is unwilling to proceed further with the matter.



charged in November 2003 with possession of drugs and intent to distribute a controlled substance. *Id.* at 53. The AA sponsor commented that he “thought that was extremely fishy from the get-go,” adding that he cannot imagine the individual being involved with drugs. *Id.* The AA sponsor concluded by opining that involvement with illegal drugs is completely “out of character” for the individual. *Id.*

Both the EAP Counselor and the DOE consultant-psychiatrist testified at the hearing that neither found any evidence of drug use by the individual in their respective evaluations of, and discussions with, the individual. *Id.* at 66, 161.

One of the great benefits of conducting a hearing in person is the opportunity it provides to carefully observe the demeanor of a witness and to gauge that witness’ candidness. Prior to the hearing, I was skeptical about the individual’s version of what transpired on the evening of November 3, 2003. However, after carefully evaluating the individual’s emotional testimony in light of his earnest demeanor at the hearing as well as the other documentary and testimonial evidence submitted on the illegal drug issue, I am convinced that the individual did not knowingly purchase or possess crack cocaine on the night of November 3, 2003. I have no doubt that the individual’s senses were affected and his judgment impaired by his alcohol consumption given that he registered an alcohol breath content of twice the legal limit in the state in which he was arrested. Nevertheless, the individual provided compelling testimony that even in an inebriated state, he would not have purchased or agreed to “hold onto” crack cocaine. In addition, family members, friends, the AA sponsor and the mental health professional in this case convinced me that the individual has had no recent involvement with illegal drugs.<sup>7</sup> Moreover, while the prosecutor’s decision not to prosecute the individual with regard to the drug charges in question is not necessarily dispositive of the merits of the drug charges, it is another factor that lends support to my finding that the individual did not purchase, use, or intend to distribute the crack cocaine on November 3, 2003. Finally, neither the DOE consultant-psychiatrist nor the EAP Counselor in their respective evaluations and conversations with the individual detected any evidence to indicate that the individual was involved in any way with illegal drugs.

In the end, it is my common sense judgment after carefully weighing all the evidence, both favorable and unfavorable, that the individual has mitigated the Criterion K charges before me.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria J and K. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns advanced by the DOE. I therefore find that restoring the individual’s access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined

---

<sup>7</sup> With regard to the individual’s admitted use of drugs almost 30 years ago when he was a teenager, I find that the passage of time and his youth at the time mitigate those old drug allegations.

that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: September 8, 2005